

ESTTA Tracking number: **ESTTA447459**Filing date: **12/20/2011**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Scott Smith		
Entity	Individual	Citizenship	UNITED STATES
Address	5714 Folsom Blvd, Ste 140 Sacramento, CA 95819 UNITED STATES		

Correspondence information	Scott Smith 5714 Folsom Blvd, Ste 140 Sacramento, CA 95819 UNITED STATES scott@bizstarz.com Phone:916-453-8611
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Registration Subject to Cancellation

Registration No	3257604	Registration date	07/03/2007
Registrant	COOK COLLECTION ATTORNEYS, P.L.C. 165 FELL STREET SAN FRANCISCO, CA 94102 UNITED STATES		

Goods/Services Subject to Cancellation

Class 025. First Use: 2006/12/15 First Use In Commerce: 2006/12/15 All goods and services in the class are cancelled, namely: Clothing, namely, t-shirts

Grounds for Cancellation

Immoral or scandalous matter	Trademark Act section 2(a)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Genericness	Trademark Act section 23
Abandonment	Trademark Act section 14

Attachments	Petition to Cancel, SqueezeBlood-FINAL.pdf (23 pages)(188764 bytes) Certificate of Service.pdf (1 page)(44361 bytes) Exhibits A thru E.pdf (28 pages)(1230468 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/Scott R. Smith/
Name	Scott Smith
Date	12/20/2011

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

SCOTT R. SMITH,
an individual,

Petitioner,

V.

COOK COLLECTION ATTORNEYS, P.L.C.,)
a California corporation,)

Respondent.

Cancellation No. _____

PETITION TO CANCEL REGISTRATION

Owner:	Cook Collection Attorneys, P.L.C.
Serial No.:	77020236
Trademark:	SqueezeBloodFromTurnip.com
Registration No.:	3257604
Register:	Principal
International Class:	025
Filed:	October 12, 2006
Registered:	July 3, 2007

Petitioner "pro se" Scott R. Smith ("Smith"), is an individual with an address of 5714 Folsom Boulevard, Suite 140, Sacramento, California 95819. Smith believes that he is and will continue to be damaged by U.S. Registration No. 3,257,604 (Exhibit A) for the mark SQUEEZE BLOOD FROM TURNIP.COM (the "SqueezeBlood Mark"), in International Class 025 for "*Clothing, namely, t-shirts.*" The SqueezeBlood Mark is owned by Cook Collection Attorneys, P.L.C. ("Cook

Collection”) a California corporation having a principal place of business at 165
Fell Street, San Francisco, California 94102.

As grounds for cancellation, Smith alleges that:

Prior Litigation

1. Smith is the president of BizStarz, a national public relations ("PR") firm for innovative and newsworthy entrepreneurs.
2. Since approximately 1995, Smith has provided public relations services for a wide-variety of innovative and newsworthy entrepreneurs, including:
 - a. Scott Olson - inventor of Rollerblade inline skates.
 - b. Bob Bondurant - founder of the Bob Bondurant School of High Performance Driving, and internationally recognized as a leading authority on advanced driver training.
 - c. Pat Sullivan - developer of ACT!, one of the world's best-selling contact management software applications.
 - d. Randy Cohen - founder and CEO of TicketCity, one of the most successful companies in the secondary ticket market, and title sponsor of the NCAA's annual TicketCity Bowl.
3. Smith and his clients have been featured by numerous major media organizations, including *The New York Times*, *Forbes* magazine, Cable News Network ("CNN"), the Oprah Winfrey Show, *Success* magazine, *Businessweek* magazine, FOX News, National Public Radio ("NPR"), *The Wall Street Journal*, and *Money* magazine.

- 1 4. Before his role as president of BizStarz began in 2000, Smith founded
2 EntrepreneurPR, which quickly became America's #1 PR firm for
3 entrepreneurs and small businesses.
- 4 5. In 1998, Smith was sued by Entrepreneur Media, Inc. ("EMI"), publisher of
5 *Entrepreneur* magazine, for federal trademark infringement over Smith's use
6 of the common and generic word "entrepreneur." Despite the fact that
7 entrepreneur is a French-derived term that predates EMI by hundreds of
8 years and is used by countless third parties around the world, including the
9 U.S. Government and multi-national organizations such as accounting giant
10 Ernst & Young, EMI alleges to own exclusive rights to the word
11 entrepreneur for all goods and services.
- 12 6. Numerous major media organizations have reported on EMI's controversial
13 efforts to monopolize the word entrepreneur, and their attacks against small
14 businesses that use the word entrepreneur in their names, including
15 *Businessweek* magazine, *The New York Times*, *Forbes* magazine, and the
16 *Los Angeles Times*. (Exhibit B)
- 17 7. Determined to monopolize the word entrepreneur and able to spend well
18 over ten times as much on attorneys than a small business owner such as
19 Smith could afford, EMI hired a team of lawyers from Latham & Watkins,
20 one of the world's largest law firms, to out duel and overwhelm Smith and

1 his sole practitioner attorney. Their strategy worked. Despite a published
2 Ninth Circuit ruling that EMI's trademark is "weak" and "descriptive," EMI
3 was able to convince a federal judge to rule that EMI's trademark is instead,
4 a "strong distinctive mark, deserving of significant protection. ...The
5 trademark laws are not primarily designed to protect careful and experienced
6 consumers, but to protect 'the ignorant, the inexperienced, and the gullible.'"
7 EMI was also able to convince the judge to rule that Smith owed EMI
8 \$1,389,908.40 in statutory damages and attorneys' fees for using the generic
9 word entrepreneur for non-competing goods and services.

- 10 8. In May 2001, Smith was forced to file personal bankruptcy as a direct result
11 of EMI's legal attacks against his use of the word entrepreneur.
- 12 9. Since at least 2001, Cook Collection has utilized unreasonable, unethical and
13 aggressive collection tactics to try and force Smith to pay EMI, even though
14 EMI and Cook Collection have determined that Smith cannot pay EMI the
15 judgment and the judgment is also being appealed.
- 16 10. In August 2006, the Honorable Brett Dorian, a federal bankruptcy judge,
17 issued a **\$10,000,000** Order to Show Cause against EMI and its attorneys of
18 record, including Cook Collection, for their collections efforts against Smith.
19 (Exhibit C) The Order to Show Cause is part of Smith's pending Ninth
20 Circuit Court of Appeals case against EMI's collections efforts.

The SqueezeBlood Mark is Immoral or Scandalous

11. Smith finds the SqueezeBlood Mark to be threatening, intimidating, pejorative, derogatory, denigrating, offensive, contemptuous, disreputable, disparaging, shocking to the sense of decency or propriety, and immoral or scandalous, now and at the time the registration was granted.
12. Section 2(a) of the Lanham Act, 15 U.S.C. §1052 (a), bars the registration of the SqueezeBlood Mark in that the mark is immoral or scandalous and was at the time the registration was granted.
13. Section 2(a) of the Lanham Act may not bar *use* of immoral or scandalous marks, however, to maintain the integrity of the trademark register, Section 2(a) prohibits the *registration* of immoral or scandalous marks.
14. The registration of the SqueezeBlood Mark should be cancelled because it gives the appearance that the immoral or scandalous SqueezeBlood Mark has been given the imprimatur of the U.S. Government.
15. Registration or use of the SqueezeBlood Mark continues to be immoral or scandalous in the context of contemporary attitudes.
16. Cook Collection is a law firm that specializes in the aggressive enforcement of judgments and collection of debts. (See Exhibit D)
17. Registration or use of the SqueezeBlood Mark by a collections firm is shocking to the sense of decency or propriety.

1 18. A substantial composite of the general public would find the SqueezeBlood
2 Mark as depicted in the alleged specimen ("SqueezeBloodFromTurnip.com,
3 Cook Collections Attorneys") to be highly insensitive, immoral or
4 scandalous when displayed on a t-shirt.

5 19. A substantial composite of the general public would find the SqueezeBlood
6 Mark as depicted in the alleged specimen ("SqueezeBloodFromTurnip.com,
7 Cook Collections Attorneys") to be highly insensitive, immoral or
8 scandalous when registered or used by a collections firm.

9 20. On December 20, 2006, Cook Collection submitted an "Amendment to
10 Allege Use Under 37 C.F.R. § 2.76 With Declaration" for the SqueezeBlood
11 Mark with an alleged "specimen showing the mark as used in commerce."
12 The specimen shows that the SqueezeBlood Mark is used in commerce in
13 conjunction with the name "Cook Collection Attorneys," with the
14 SqueezeBlood Mark utilizing a *smaller* font than the name, "Cook
15 Collection Attorneys." The specimen was supported by a signed declaration
16 by attorney David Cook, president of Cook Collection, acknowledging that
17 "willful false statements and the like so made are punishable by fine or
18 imprisonment or both, under Section 1001 of Title 18 of the United States
19 Code...all statements made of my own knowledge are true, and all

1 statements made on information and belief are believed to be true." (See
2 Exhibit E)

3 21. Cook Collection's alleged "specimen showing the mark as used in
4 commerce," shows that the SqueezeBlood Mark is immoral or scandalous as
5 used in commerce, and as it was represented to the trademark office.

6 22. Cook Collection's alleged specimen shows that Cook Collection is using the
7 SqueezeBlood Mark for and in conjunction with its collections services and
8 efforts to seize assets from numerous individuals and organizations.

9 23. Cook Collection regularly sends letters and envelopes that prominently
10 display the SqueezeBlood Mark to parties that Cook Collection is trying to
11 seize assets from.

12 24. Cook Collection's use of the SqueezeBlood Mark on its official stationary
13 shows that Cook Collection is using the SqueezeBlood Mark for and in
14 conjunction with its collections services and efforts to seize assets from
15 numerous individuals and organizations.

16 25. Cook Collection's use of the SqueezeBlood Mark on its official stationary
17 that Cook Collection sends to parties that it is trying to seize assets from, is
18 highly insensitive, offensive, and scandalous or immoral.

1 26. In its efforts to harass and seize assets from Smith, Cook Collection has
2 mailed numerous envelopes to Smith that prominently display the
3 SqueezeBlood Mark. (See Exhibit F)

4 27. The SqueezeBlood Mark is highly insensitive, immoral or scandalous when
5 registered or used by a collections firm, and its use by Cook Collection
6 could cause a person already suffering from high levels of stress due to an
7 inability to pay their debts to "snap" and do harm to themselves or others.

8 28. The registration or use of the SqueezeBlood Mark by a collections firm is
9 highly insensitive, immoral or scandalous in light of America's current
10 economic crisis. Bankruptcy cases filed in federal courts for fiscal year
11 2011, the 12-month period ending September 30, 2011, totaled 1,467,221,
12 according to the Administrative Office of the U.S. Courts. (See Exhibit G)

13 29. Cook Collection's registration or use of the SqueezeBlood Mark is
14 particularly insensitive, immoral or scandalous because the majority of Cook
15 Collection's targeted parties live and work in California, a state rocked by
16 some of the nation's highest unemployment and foreclosure rates. In
17 November 2011, California had the nation's biggest month-over-month
18 increase in foreclosure auctions, according to a December 15, 2011 *Los*
19 *Angeles Times* article. According to the article, "Banks set the clock for

1 forced sales of more than 26,000 homes in the state in November, a 63%
2 increase from October." (See Exhibit H)

3 30. Cook Collection's use of the SqueezeBlood Mark is particularly insensitive,
4 immoral or scandalous because most people are forced into bankruptcy for
5 reasons largely outside of their control. For instance, according to a
6 December 18, 2011 article by *The Sacramento Bee*, "For the bulk of this
7 decade, medical debt has been a leading cause of personal bankruptcy,
8 contributing to at least 60 percent of filings by 2007, according to a 2009
9 Harvard University study." (See Exhibit I)

10 31. A substantial composite of individuals and organizations - particularly those
11 facing collections - but also federal bankruptcy judges, consumer bankruptcy
12 attorneys, consumer bankruptcy associations, and consumer bankruptcy
13 counselors, would find the SqueezeBlood Mark to be highly insensitive,
14 immoral or scandalous when registered or used by a collections firm.

15 32. A substantial composite of reporters and media organizations would find the
16 SqueezeBlood Mark to be highly controversial or scandalous when
17 registered or used by a collections firm.

18 33. It is highly insensitive, offensive, and scandalous or immoral, for a
19 collections firm to register or use the SqueezeBlood Mark, particularly in
20 association with products with extensive public exposure such as "t-shirts."

1 Countless news articles have been published about scandals caused by t-
2 shirts featuring scandalous or immoral words or images. A recent Google
3 search generated "about 28,300,000" results for the words "t-shirt scandal."
4 (See Exhibit J)

5 34. When registered or used by a collections firm against someone facing
6 collections, the SqueezeBlood Mark is highly insensitive, threatening,
7 intimidating, pejorative, derogatory, denigrating, offensive, contemptuous,
8 disreputable, disparaging, scandalous or immoral.

9 35. Smith has repeatedly objected to the SqueezeBlood Mark, but Cook
10 Collection has refused to abandon the SqueezeBlood Mark, or to
11 acknowledge its insensitive, offensive, and immoral or scandalous nature.

12 36. The well-known idiom, "you can't squeeze blood from a turnip," is
13 universally understood to mean that you cannot get something from
14 someone, **especially money** that they do not have.

15 37. The SqueezeBlood Mark is immoral or scandalous because Cook Collection
16 created the SqueezeBlood Mark so that a substantial composite of the
17 general public would associate the mark with the near-identical and well-
18 known idioms, "you can't squeeze blood from a turnip" or "you can't squeeze
19 blood out of a turnip."

1 38. The SqueezeBlood Mark is immoral or scandalous because Cook Collection
2 created and uses the SqueezeBlood Mark to harass, intimidate and bring fear
3 to those it is trying to seize assets from; and to send a message that Cook
4 Collection is willing and able to go far beyond what is ethical or reasonable
5 in order to seize someone's assets.

6 39. The SqueezeBlood Mark is immoral or scandalous because Cook Collection
7 created and uses the mark to attract clients that are willing to go far beyond
8 what is ethical or reasonable in order to seize someone's assets.

9 40. The SqueezeBlood Mark is immoral or scandalous because Cook Collection
10 intentionally uses a bright Red color to emphasize the word "Blood" in the
11 SqueezeBlood Mark so that seeing the mark will generate highly unpleasant
12 feelings and images of bloodshed or gore for a substantial composite of the
13 general public. (See Exhibit K)

14 41. The SqueezeBlood Mark is immoral or scandalous because Cook Collection
15 uses the SqueezeBlood Mark in its law firm's email addresses and domain
16 name. (See Exhibits L & M - web print out, whois)

17 42. The SqueezeBlood Mark is immoral or scandalous because Cook Collection
18 prominently features the SqueezeBlood Mark on its law firm's website. (See
19 Exhibit N)

1 43. The SqueezeBlood Mark is immoral or scandalous because Cook Collection
2 uses the SqueezeBlood Mark in its law firm's official email addresses for
3 court proceedings and the State Bar of California. (See Exhibit O)

4 44. The SqueezeBlood Mark is immoral or scandalous because Cook Collection
5 also owns two (2) federally registered trademarks for "WINNING IS
6 NOTHING COLLECTING IS EVERYTHING" ("Collecting is Everything
7 mark"). Registration No. 3008843 for "Clothing, namely, T-shirts"; and
8 Registration No. 2395901 for "Legal Services". (See Exhibits P & Q)

9 45. The SqueezeBlood Mark is immoral or scandalous due to Cook Collection's
10 simultaneous usage of its Collecting is Everything marks.

11 46. The SqueezeBlood Mark is immoral or scandalous because in late 2005 and
12 early 2006, a significant and increasing number of real estate experts,
13 economists and media outlets were warning that America's real estate bubble
14 was bursting and that real estate prices could tumble and send America into
15 a severe recession:

16 The booming housing market halted abruptly in many parts of the
17 U.S. in late summer of 2005 ...In August 2006, *Barron's* magazine
18 warned, "a housing crisis approaches" ...predicted that "the national
19 median price of housing will probably fall by close to 30% in the next
20 three years" ...Based on slumping sales and prices in August 2006,
21 economist Nouriel Roubini warned that the housing sector was in
22 "free fall" and would derail the rest of the economy, causing a
23 recession in 2007. Joseph Stiglitz, winner of the Nobel Prize in
24 economics in 2001, agreed, saying that the U.S. might enter a

1 recession as house prices declined. (Wikipedia, "United States
2 housing market correction") (See Exhibit R)
3

4 47. The SqueezeBlood Mark is immoral or scandalous because Cook Collection
5 decided to file its intent-to-use application for the SqueezeBlood Mark soon
6 after real estate experts, economists and media outlets began warning that
7 America's real estate bubble was bursting and that real estate prices could
8 tumble and send America into a severe recession.

9 48. The SqueezeBlood Mark is immoral or scandalous because Cook Collection
10 chose to begin using the mark just as America and the entire world economy
11 began plummeting into what is often referred to as the Great Recession.

12 49. The SqueezeBlood Mark is immoral or scandalous because Cook Collection
13 has refused to cease use of the SqueezeBlood Mark despite the fact that
14 millions of Americans are battling and suffering from persistent high
15 unemployment, a continuing decline in home values, and an increase in
16 foreclosures and personal bankruptcies.

17 50. The SqueezeBlood Mark is immoral or scandalous because it suggests that
18 Cook Collection is trying to use the mark to profit and capitalize on the fact
19 that millions of Americans are unable to pay their debts due to America's
20 current economic crisis.

21 51. The SqueezeBlood Mark is immoral or scandalous because it suggests that
22 Cook Collection is guilty of schadenfreude (getting satisfaction or pleasure

1 from someone else's misery or misfortune), and finds pleasure in harassing
2 and intimidating people who are in a significantly compromised position
3 financially and emotionally, and are unable to adequately defend themselves
4 against an aggressive and insensitive collections firm such as Cook
5 Collection because they are unable to afford an attorney or pay their debts.

6 52. The SqueezeBlood Mark is immoral or scandalous because it is disgraceful,
7 shameful and shocking that a collections firm would register or use the
8 SqueezeBlood Mark for and in conjunction with its collections services and
9 efforts to seize assets from numerous individuals and organizations.

10 **Dictionaries and Articles Show that**
11 **SqueezeBlood Mark is Immoral or Scandalous**

12 53. Dictionary.com defines the word "scandalous" as being "disgraceful;
13 shameful or shocking." (See Exhibit S)

14 54. Dictionary.com defines the word "immoral" as "violating moral principles;
15 not conforming to the patterns of conduct usually accepted or established as
16 consistent with principles of personal and social ethics." (See Exhibit T)

17 55. Dictionary definitions establish that a substantial composite of the general
18 public would find the SqueezeBlood Mark as depicted in the alleged
19 specimen ("SqueezeBloodFromTurnip.com, Cook Collections Attorneys") to
20 be highly insensitive, immoral or scandalous when displayed on a t-shirt.

1 56. Dictionary definitions establish that registration or use of the SqueezeBlood
2 Mark by a collections firm is scandalous and immoral to a substantial
3 composite of the general public.

4 57. Urbandictionary.com defines "you can't squeeze blood out of a turnip" as
5 meaning: "You can't get something from a person, **especially money**, that
6 they don't have i.e. A turnip cannot be coaxed, squeezed, or cajoled into
7 producing blood. All efforts at obtaining blood from this vegetable will be
8 futile." (See Exhibit U) Emphasis added.

9 58. UsingEnglish.com defines "you can't squeeze blood out of a turnip" as
10 meaning: "When people say that you can't squeeze blood out of a turnip, it
11 means that you cannot get something from a person, **especially money**, that
12 they don't have." (See Exhibit V) Emphasis added.

13 59. Dictionary.com defines "squeeze blood from a turnip" as meaning: "You
14 can only get from people what they are willing or able to give." (See Exhibit
15 W)

16 60. Yourdictionary.com defines "you can't squeeze blood out of a turnip" as
17 meaning: "You can only get from people what they are willing or able to
18 give." (See Exhibit X)

19 61. Numerous articles establish that a substantial composite of the general
20 public would find the SqueezeBlood Mark as depicted in the alleged

specimen ("SqueezeBloodFromTurnip.com, Cook Collections Attorneys") to be highly insensitive, immoral or scandalous when displayed on a t-shirt.

62. Numerous articles establish that registration or use of the SqueezeBlood Mark by a collections firm is scandalous and immoral to a substantial composite of the general public.

63. A December 22, 2008 posting on the Chapati Mystery blog stated that, "Good lord. It almost seems like an elaborate hoax—the divorce attorney and **the collections lawyer with a 'squeezebloodfromturnip.com' website?**—devised to produce the greatest possible degree of literary absurdity." (See Exhibit Y) Emphasis added.

64. A June 1, 2009 article by *The New York Times* stated that, "**You can't squeeze blood from a turnip** or water from a stone...When you're trying to reach a deal, you have to understand the resources of the party you're dealing with." (See Exhibit Z) Emphasis added.

65. A November 21, 2008 article by Radio and TV consumer advocate Clark Howard, host of HLN's *The Clark Howard Show*, stated:

Debt-collection agencies are reporting big losses, according to *The Wall Street Journal*. For example, one agency owned by Chase lost \$15 million in the last 90 days because their level of collections has dropped. People are tapped out and **you can't squeeze blood from a turnip!** *The Wall Street Journal* also reports that as collectors are getting more desperate, they're also engaging in more illegal activity to try to get money. There are reports of collectors cussing at people and threatening them

1 with jail or physical harm. One caller to the show even told us
2 that a collector told her 7 year old, "Mommy is going to jail."
3 (See Exhibit AA) Emphasis added.
4

5 66. An April 18, 2011 article by Dallas Bankruptcy Attorneys & Lawyers stated
6 that:

7 While many debt collectors are just trying to do their job by
8 calling and asking you when you will be able to repay your
9 debt, many times these collection attempts turn menacing and
10 harassing. As the saying goes, **you can't squeeze blood from a**
11 **turnip**. If you do not have additional funds to cover your debts,
12 they simply cannot get paid. Federal legislators have recognized
13 that debt collectors often go to [sic] far in their attempts to
14 collect a debt, which led to the enactment of the Fair Debt
15 Collection Practices Act. (See Exhibit BB) Emphasis added.
16

17 67. An October 31, 2011 article by *The Sacramento Bee* discussed how a school
18 district's police officers association was put under intense scrutiny due to
19 complaints and heavy criticism from community leaders and child advocates
20 over the police association's selling of t-shirts with a picture of a young child
21 behind bars surrounded by the message "U raise 'em, we cage 'em." (See
22 Exhibit CC)

23 **Cook Collection's Fraudulent Actions**

24 68. On October 12, 2006, Cook Collection filed its original intent-to-use
25 application for the SqueezeBlood Mark, claiming that it had a "bona fide
26 intention to use or use through the applicant's related company or licensee

1 the mark in commerce on or in connection with the identified goods and/or
2 services."

3 69. On December 20, 2006, Cook Collection filed an "Amendment to Allege
4 Use Under 37 C.F.R. § 2.76 With Declaration" for the SqueezeBlood Mark
5 with an alleged "specimen showing the mark as used in commerce,"
6 presumably for "*Clothing, namely, t-shirts*" (it was unclear how the mark
7 was actually being used in commerce from the specimen submitted by Cook
8 Collection).

9 70. Smith believes and alleges that Cook Collection intentionally and
10 knowingly did not file bona fide proof of use of the SqueezeBlood Mark in
11 commerce to support the registration of the SqueezeBlood Mark.

12 71. Smith believes and alleges that the SqueezeBlood Mark is immoral or
13 scandalous and was fraudulently obtained, because Cook Collection did not
14 have a bona fide intention to use the SqueezeBlood Mark as claimed and did
15 not use it as claimed.

16 72. Smith believes and alleges that Cook Collection intentionally mislead the
17 Trademark Office into believing that Cook Collection had a bona fide
18 intention to use the SqueezeBlood Mark for "t-shirts," but instead intended
19 to use the SqueezeBlood Mark for its collections services and efforts to seize
20 assets from numerous individuals and organizations.

1 73. Smith believes and alleges that the overwhelming majority of Cook
2 Collection's use of the SqueezeBlood Mark has been for its collections
3 services and efforts to seize assets from numerous individuals and
4 organizations, not for "t-shirts" as Cook Collection claimed to the
5 Trademark Office.

6 74. Smith believes and alleges that Cook Collection has sold no more than a de
7 minimis number of t-shirts with the SqueezeBlood Mark, and has likely not
8 sold any t-shirts with the SqueezeBlood Mark.

9 75. Smith believes and alleges that Cook Collection intentionally mislead the
10 Trademark Office by filing for the SqueezeBlood Mark in international class
11 025 for "Clothing, namely, t-shirts" because Cook Collection believed that
12 the Trademark Office would have denied the SqueezeBlood Mark for being
13 immoral or scandalous had Cook Collections filed it in international class
14 042 for "Legal Services."

15 76. Smith believes and alleges that Cook Collection had knowledge and belief
16 that there is no viable market for SqueezeBlood Mark "t-shirts."

17 77. Smith believes and alleges that on December 20, 2006, despite having
18 knowledge and belief that "other persons, firms, corporations, or
19 associations had the right to use said mark in commerce, either in the
20 identical form or in such near resemblance thereto as may be likely, when

1 applied to the goods or services of such other person, as to cause confusion,
2 or to cause mistake, or to deceive," Cook Collection filed a signed
3 declaration by attorney David Cook, president of Cook Collection, stating
4 and alleging that:

5 I, DAVID COOK, being hereby warned that willful false
6 statements and the like so made are punishable by fine or
7 imprisonment or both, under Section 1001 of Title 18 of the
8 United States Code, and that such willful false statements may
9 jeopardize the validity of the application or any registration
10 resulting therefrom, declare that: I am the applicant; I believe
11 that I am the owner of the mark sought to be registered; to the
12 best of my knowledge and belief, no other person, firm,
13 corporation or association has the right to use said mark in
14 commerce, either in the identical form or in such near
15 resemblance thereto as may be likely, when applied to the
16 goods or services of such other person, as to cause confusion, or
17 to cause mistake, or to deceive; all statements made of my own
18 knowledge are true; and all statements made on information and
19 belief are believed to be true. (See Exhibit DD)

20
21 78. Smith is unsure who would want to purchase or wear a "t-shirt" featuring
22 the SqueezeBlood Mark and the words "Cook Collection Attorneys," and he
23 has been unable to locate a single shirt for sale using the SqueezeBlood
24 Mark, including nowhere on SqueezeBloodFromTurnip.com, or by
25 searching the Internet using the three largest search engines, Bing, Google,
26 and Yahoo.

27 79. A Google search by Smith for the near-identical phrase "Squeeze Blood
28 From a Turnip" and the word "shirt," generated "about 2,330,000 results,"

1 none of which appeared to be controlled by or in any way associated with
2 Cook Collection. (See Exhibit EE)

3 80. Smith believes and alleges that at the time of filing the application, Cook
4 Collection did not have a bona fide intent to use the SqueezeBlood Mark in
5 commerce for "Clothing, namely, t-shirts."

6 81. Smith believes and alleges that at the time of filing its declaration of alleged
7 use and its alleged specimen, Cook Collection had not used the
8 SqueezeBlood Mark in commerce for "Clothing, namely, t-shirts."

9 82. Smith believes and alleges that Cook Collection has never used the
10 SqueezeBlood Mark in commerce for "Clothing, namely, t-shirts."

11 83. Smith believes and alleges that Cook Collection knowingly and fraudulently
12 provided the Trademark Office with false information about Cook
13 Collection's alleged use of the SqueezeBlood Mark with the intent to deceive
14 the Trademark Office.

15 84. Smith believes and alleges that the alleged use of the SqueezeBlood Mark
16 by Cook Collection was knowingly false or merely token or de minimis use
17 claimed for the purpose of reserving Cook Collection's right in the mark
18 with the intent to deceive the Trademark Office.

19 85. Smith believes and alleges that the specimen and statements made by Cook
20 Collection to the Trademark Office were knowingly false.

1 86. The fraudulent evidence submitted by Cook Collection, and the false
2 statements made by Cook Collection were material misrepresentations in
3 that the registration would not have been granted but for the knowingly false
4 misrepresentations.

5 87. The Trademark Office reasonably relied on the fraudulent evidence and
6 statements when granting registration of the SqueezeBlood Mark.

7 88. Smith believes and alleges that Cook Collection has abandoned and/or
8 failed to adequately police the SqueezeBlood Mark. Because of this a
9 substantial number third parties have freely used identical or near-identical
10 versions of the SqueezeBlood Mark, causing the mark to lose its claimed
11 significance as a mark or become a generic name for the services with which
12 it is allegedly used.

13
14 I declare under penalty of perjury under the laws of the United States that the
15 foregoing is true and correct and that this motion was executed on December 20,
16 2011, at Sacramento, California.

17 WHEREFORE, Smith prays that this Petition for Cancellation be granted and
18 that Registration No. 3,257,604 be cancelled.

19
20 Respectfully submitted,

21
22 Dated: December 20, 2011

23 By: /Scott R. Smith/
Scott R. Smith

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3
4
5
6

Petitioner (PRO SE)
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Email: scott@bizstarz.com

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **PETITION TO CANCEL REGISTRATION** has been served on the Registrant by mailing a copy on December 20, 2011 via **FedEx Express**, postage prepaid to:

Cook Collection Attorneys, P.L.C.
165 Fell Street
San Francisco, CA 94102

/Scott R. Smith/

Scott R. Smith

Exhibit A



United States Patent and Trademark Office

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Word Mark	SQUEEZEBLOODFROMTURNIP.COM
Goods and Services	IC 025. US 022 039. G & S: Clothing, namely, t-shirts. FIRST USE: 20061215. FIRST USE IN COMMERCE: 20061215
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	77020236
Filing Date	October 12, 2006
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	April 17, 2007
Registration Number	3257604
Registration Date	July 3, 2007
Owner	(REGISTRANT) Cook, Perkiss & Lew, P.L.C. CORPORATION CALIFORNIA 333 Pine Street, 3rd Floor San Francisco CALIFORNIA 941043381 (LAST LISTED OWNER) COOK COLLECTION ATTORNEYS, P.L.C. CORPORATION CALIFORNIA 165 FELL STREET SAN FRANCISCO CALIFORNIA 94102
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Marc M. Gorelnik, Esq.
Type of Mark	TRADEMARK
Register	PRINCIPAL
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Exhibit B

Tongue Tied

STEPHEN MORRIS WAS THRILLED when *Entrepreneur* magazine plugged his Atlanta-based business, Kids Way, three years ago. Today, he and Vice President Misty Elliott wish *Entrepreneur* had never heard of them.

The magazine's April 1997 article read like a free ad. It detailed how Kids Way teaches the 8-to-18 crowd to start businesses and listed contact information. "Kids Way also publishes a bimonthly newsletter, *Young Entrepreneur*," *Entrepreneur* wrote. Within 20 months the 2,000-circulation newsletter grew into a glossy with 16,000 paid subscribers. Today it doesn't even exist—not in name, at least. Last year, *Entrepreneur* filed a lawsuit in federal court against Morris and Elliott, alleging that their use of the word "entrepreneur" violated the magazine's trademark, and asking for treble damages.

Morris didn't want to waste time on a costly defense and changed the newsletter's name to *Y&E*, which has hampered subscription renewals. "It seems they're going after the little guys who don't have the resources to fight them," says Elliott.

The nasty fistfight over intellectual property has taken some pretty strange forms these days—what with Amazon.com and Priceline.com putting a legal force field around their business models. But trying to corner the market on a word bandied about more often than "bandwidth"?

For the past six years Entrepreneur Media, the Irvine, Calif.-based parent of *Entrepreneur*, has protected its trademark name by going after small businesses that use the word "entrepreneur" in publications and on Web sites. Smart business, no doubt. But crippling to some of the very people it purports to help. Among the sundry victims: **Asian Entrepreneur**. The Diamond Bar, Calif. publication changed its name to *Asian Enterprise* in 1994 after receiving a cease-and-desist letter. "A legal fight would have put us under", says publisher Gelly Borromeo. **Publishing Entrepreneur**. This Traverse City, Mich.-based outfit scrapped its print publication in 1997, and fled to the Web with a new name entirely, *Independent Publisher*. Says founder Jerrold Jenkins, "They just bully you." **Entrepreneur Illustrated**. That's the quarterly publication of Scott Smith, president of Sacramento, Calif.-based EntrepreneurPR. Smith is being sued. "They told me they're going to wear me out by making my life a living hell," he says. Smith insists he will contest the suit. **www.entrepreneur.com**. Never mind that the Web site was registered in 1994 by James Borzilleri, president of FreeClub.com—two years before *Entrepreneur* registered its site, www.entrepreneurmag.com. Entrepreneur Media went after him last year. Borzilleri (whom *Entrepreneur* calls a "cybersquatter") sold out for a reported \$50,000. **www.entrepreneurs.com**. Another legal target, Gregory McLemore, has set up a protest page at his Web site, www.entrepreneurs.com/free.html. This guy has plenty of money to fight back. He built and sold Toys.com to Etoys, and founded Pets.com, which went public in February, raising \$82.5 million. "There's a good chance that their trademark could be thrown out," says McLemore, president of Pasadena, Calif. incubator, WebMagic.

Maybe. Folks like McLemore and Smith could fend off the legal attack by proving that "entrepreneur" is a generic term. Turning generic is what killed the onetime trademarks for cellophane and escalator and what the owners of names like Xerox and Kleenex spend small fortunes to prevent. "Entrepreneur," of course, is rather different from Xerox because the company claiming to own the trademark did not coin the word. But Entrepreneur Media registered the trademark in 1982, and has the powerful Latham & Watkins of Los Angeles behind it.

The monthly was founded in 1978 by Chase Revel, author of how-to business books, including the 1979 "classic," *The Newest, Most Unique Ways People Are Making Money, Vol. II*. The magazine filed for Chapter 11 in 1982.

Today *Entrepreneur* is owned and operated by Peter Shea, who bought the magazine in 1987. Circulation is up 36% over the past five years to 527,658. Advertising revenue for 1999 rose 8% last year to \$56 million (before discounts), some of that from classifieds like "EXTRACASH! No fees, no memberships. For kit information, send \$10 (refundable) to: Black Hole Innovations Inc."

Next thing you know, they'll trademark the words "golden opportunity."

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SMALL BUSINESS

Entrepreneurs Must Choose Their Words With Care

By AMY ZIPKIN

Published: October 7, 2004

Entrepreneur magazine is playing hardball to stop entrepreneurs from using the word entrepreneur.

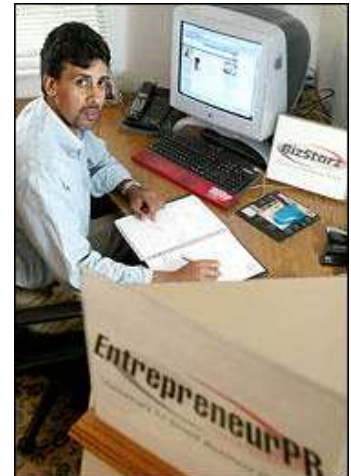
Entrepreneur Media Inc., the magazine's owner, waged a successful six-year legal battle to prevent a California publicist from calling his company EntrepreneurPR and from using the word in a quarterly periodical he once published, Entrepreneur Illustrated. It won a \$1.4 million judgment against him and is seeking payment even though he says his business, which he long ago rechristened BizStarz, is now in a shambles.

Another publication in Entrepreneur magazine's sights was Publishing Entrepreneur of Traverse City, Mich. Its owner folded it into sister publication Independent Publisher after being sued.

Seven years ago Entrepreneur Media also tried to thwart the consulting firm Ernst & Young from issuing the Ernst & Young Entrepreneur of the Year Magazine in conjunction with its annual awards program. The firm held its ground and Entrepreneur Media backed off.

The Donald H. Jones Center for Entrepreneurship at Carnegie Mellon University chose another course. After receiving a letter from Entrepreneur Media in 2001 describing its quarterly alumni newsletter The Entrepreneur as "a flagrant violation of the trademark," the center renamed it the DJC Newsletter.

In 1999 Entrepreneur Media also sued the holders of the Internet addresses entrepreneurs.com and entrepreneur.net. Though it later dropped the complaints, it served notice that it reserved the right to reinstate them. "I can't build a commercial site because there's been the threat of litigation," said Jeff Busche of Huntington Beach, Calif., a Web site developer who is the owner of entrepreneur.net. And Gregory McLemore, whose company owns the entrepreneurs.com name, said he "felt like I was mugged. They are trying to commandeer this word and remove it from the language."



Ken James for The New York Times
Scott Smith changed the name of his business to BizStarz after losing a court battle over the use of the word entrepreneur.

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And so it goes. In all, Entrepreneur Media says that in the last 10 years, it has resolved or settled about 40 instances of actual or potential trademark infringement. It declines to specify how many lawsuits it filed or how many cease-and-desist letters it sent, saying only it deals with infringement on a case-by-case basis.

It is currently opposing a trademark application by Kevin Harrington of St. Petersburg, Fla., to name a series of how-to business books The Virtual Entrepreneur. Mr. Harrington's attorney said his client was in discussions with Entrepreneur Media but declined to give details.

Entrepreneur Media is not the only media company laying claim to a common English word. In June 2002, a law firm representing Village Voice Media, publisher of The Village Voice, sent a letter to The Cape Cod Voice, a year-old publication in Orleans, Mass., warning that its name could cause "confusion as to the source or affiliation with our client or its famous trademarks and will erode or blur the distinctiveness of the Voice marks." The company offered to pay the costs of changing the publication's name, and cautioned Seth Rolbein, editor and publisher of The Cape Cod Voice, that it had previously brought litigation against The Bloomington Voice, in Indiana, now The Bloomington Independent, and reached agreements with The Tacoma Voice, in Washington State, now The Tacoma Reporter, and The Dayton Voice, in Ohio, now Impact Weekly.

Mr. Rolbein was not buying it. In October 2002, he wrote to Village Voice Media, saying, "Perhaps I can put your main concern to rest: There is no consumer confusion between the media company you work for and The Cape Cod Voice." Mr. Rolbein says he has not heard back from The Village Voice. "Small places have the right to their own voices," he said. Repeated phone calls to The Village Voice were not returned.

Businesses have the right to seek trademark protection for their names, logos and products, of course. Last year, the United States Patent and Trademark Office received 267,218 trademark applications, up from 258,873 the previous year. The office may reject applications for a number of reasons. In August, it turned down Donald Trump's attempt to register his "You're fired" watchword for toys, citing the likelihood of confusion with the name of a board game called "You're Hired." It has also turned thumbs down to FileFinder, Co-Management and Orange Zest on the ground that they were merely descriptive of the applicants' goods or services.

All of which raises the question: Can a publication claim a common word as its own property? A lot of publications contain the words business, money and times. What is so special about the word entrepreneur?

Entrepreneur Media applied in 1985 to register the word for use in magazines, books and other publications "pertaining to business opportunities" as well as for computer programs. Entrepreneur magazine, which was seven years old at the time, today has a circulation of 560,000.

The law considers a trademark valid after five years of uncontested use. Entrepreneur Media says it believes that other publications containing the word entrepreneur will sow confusion in the public's mind and benefit from its reputation, and thus are fair game for legal action.

Scott Smith of Sacramento found that out. Mr. Smith began Icon Publications in 1995 and two years later began publishing compilations of his press releases as the Yearbook of Small Business Icons. Entrepreneur magazine named his ICONpub .com a Web site of the week in the fall of 1996.

In 1997, with his business growing, Mr. Smith renamed his company EntrepreneurPR and a quarterly periodical he published Entrepreneur Illustrated. "It's a big image kind of word," he said.



Photo: McCall's magazine homemaking cover, 1939
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In January 1998, Entrepreneur demanded that Mr. Smith remove the word entrepreneur from the names or face legal action. "They think they own this word," he recalls telling his lawyer.

He refused to comply and Entrepreneur Media filed a lawsuit in May, accusing him of trademark infringement and unfair competition. He decided to fight back, reasoning that because his publication had no paid subscribers or advertising, it posed no competitive threat to Entrepreneur magazine. Having secured rights to the Web address EntrepreneurPR.com, he also applied for trademarks for his company and magazine.

Eighteen months later, a federal district court ruled in Entrepreneur Media's favor. It prohibited Mr. Smith from using trademark EntrepreneurPR and awarded Entrepreneur magazine \$337,280 in damages. Mr. Smith changed his company's name to BizStarz.

Though he had 110 clients and nine employees and expected \$3 million in billings in 2000, Mr. Smith said the court's verdict placed a "major burden" on his company and business tapered off. He reduced staff, and in May 2001 filed for Chapter 7 bankruptcy liquidation because he could not meet the court's judgment. During the next year, he laid off his remaining employees. In early 2002, he started working from home.

However, he appealed the district court's decision with the support of the California Small Business Association and the California Small Business Roundtable. In an amicus brief, the trade groups wrote that because the word entrepreneur is in the public domain, "no provider of products or services to small business owners has had the right to bar others from using the term."

In February 2002 an appeals court, calling the entrepreneur trademark descriptive and weak, sent the case back to the lower court, which in June 2003 ruled again in favor of Entrepreneur Media and awarded it \$669,700 in damages, \$39,300 in costs and \$681,000 in lawyer's fees. This time, the appeals court affirmed the lower-court ruling.

Ronald Young, Entrepreneur Media's corporate counsel, makes no apologies for the company's aggressive legal stance. "Otherwise, a company can siphon off your business and make a profit from your mark," he said.

But some legal experts wonder whether Entrepreneur Media did not just grab a questionable decision by the trademark office and run with it. "An administrative agency can make mistakes and give protection to marks that shouldn't have been protected," said Roger E. Schechter, professor of law at George Washington University. "Small businesses are at a disadvantage when this happens because litigation is expensive, risky and takes an owner's mind off the business."

Mr. Smith's travails continue. He is down to five clients, has a \$1.4 million obligation to Entrepreneur Media and legal fees of more than \$100,000 and calculates his legal ordeal has cost him "millions of dollars" in lost business.

Entrepreneur Media has applied for more than 100 trademarks related to entrepreneurs, though it has abandoned some, like "You've Got Your Dream Now Get it Done." It also continues registering trademarks with the word entrepreneur in them, most recently in March for "Exchange, The Magazine for Entrepreneurial Women," which it plans to publish this year.

Meanwhile, Mr. Smith has retained a pro bono lawyer, Anthony E. Dowell of Lafayette, Ind., who says he will petition the trademark office to cancel the existing entrepreneur trademark as invalid and generic. He wants entrepreneur to join words like yo-yo and trampoline that were once trademarks but are now part of the vernacular.

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FEATURES May 19, 2011, 5:00PM EST

Entrepreneur, the Magazine That Sues Entrepreneurs

The curious case of Entrepreneur Media Inc., which never rests in its quest to nurture—and afflict—other startups

By [Paul M. Barrett](#)

Entrepreneur Media Inc. sells the idea of the self-made little guy getting ahead. Based in Irvine, Calif., EMI, as the company is known, publishes *Entrepreneur*, a monthly magazine with a circulation of 607,000 and a colorful history. According to newspaper reports, the periodical's founder and former owner, Chase Revel, once tried robbing banks for a living. Today, EMI conducts seminars revealing "business success secrets" of a more mainstream nature. It markets instructional CDs and sells advertising to package deliverers, health insurers, and franchisers such as Wahoo's Fish Taco restaurants. In other words, EMI caters to all things entrepreneurial. Strangely, it also smashes the dreams of the self-starters it aims to serve.

Daniel R. Castro, a serial entrepreneur in Austin, Tex., received a stern letter from EMI's lawyers last September ordering him to "cease and desist" using his new website, EntrepreneurOlogy.com. In his day, Castro, 50, has started a law firm, a mortgage company, and a real estate-lending outfit. He employs a half-dozen people full-time and coordinates the work of a platoon of brokers. He also delivers motivational speeches to other business owners and hopes the new website will provide an online home for a workshop series. "I was dumbfounded," he says of the cease-and-desist letter. Like a lot of people who work for themselves, he doesn't like to be told what to do. "Their problem," he says of EMI, "was that they didn't know who they were picking on."

An attorney with the corporate law firm Latham & Watkins informed Castro that EMI owns the U.S. trademark for the word "entrepreneur." With 2,000 lawyers in 31 offices around the world, Latham polices EMI's intellectual property aggressively. The firm even instructed Castro to surrender his domain name to EMI. "If you fail to abide by these demands," the letter said, "Entrepreneur Media will have no choice but to take appropriate action to prevent continued use of an infringing mark and domain name."

The archetypal trademark—for McDonald's ([MCD](#)) or Xerox, say—prevents competitors from using a distinctive word that might cause consumers to assume they were buying a product made by the mark holder. To Castro and others, "entrepreneur" seems different. "How can you trademark a commonly used word, derived from the French, that's hundreds of years old?" he asks. And more to the point, "why would the publisher of *Entrepreneur* magazine be bullying entrepreneurs?"

Since the early 1980s, EMI has sued or threatened to sue scores of businesses and organizations it claims infringed its trademarks. EMI won't provide a tally of its targets, but it almost always prevails.

Scott Smith, a public-relations man in Sacramento, Calif., fought back and paid the price. A federal judge ruled in 2003 that he had to drop EntrepreneurPR as his firm name, stop publishing a quarterly compilation of press releases called *Entrepreneur Illustrated*, and pay EMI more than \$1 million in damages and attorneys' fees. "They crushed me, and I had to file for personal bankruptcy," says Smith, who is still contesting what he owes the publisher.

EMI goes after a broad spectrum of businesses, ranging from Internet startups to a fledgling clothing manufacturer. In 2001 it persuaded the nonprofit Donald H. Jones Center for Entrepreneurship at Carnegie Mellon University to change the title of its quarterly alumni newsletter, *The Entrepreneur*. In 2004 it stopped 3Entrepreneurs, a San Diego apparel company, from putting the phrase "Entrepreneur Generation" on T-shirts, sweaters, and hats. At present, EMI is skirmishing with the Entrepreneur Hall of Fame and Museum, a one-man website based in Glen Cove, N.Y., with aspirations of someday occupying a brick-and-mortar facility. "*Entrepreneur* is the enemy of entrepreneurs," says the hall of fame's proprietor, Mitch Schlimer, who began his career selling New York-style soft pretzels from a street cart with his grandfather.

Demonized by those it pursues, EMI's legal strategy benefits from the momentum of a larger judicial trend. "The point of federal trademark law is to prevent consumer confusion," explains Mark A. Lemley, an intellectual property scholar at Stanford Law School. "In recent decades, though, courts have expanded the idea of consumer confusion so much that you have businesses like Entrepreneur Media stifling other, smaller businesses whose goods or services just aren't likely to interfere with consumers making well-informed decisions." In EMI's case, the professor adds, "it's particularly ironic because the trademark holder is in the business of helping the kinds of people and businesses it's suing."

EMI sees no irony, let alone bullying. In an e-mail, the company's lead attorney at Latham, Perry J. Viscounty, says his client "vigorously enforces its trademark rights in appropriate circumstances, when a third-party use is likely to

cause confusion in the marketplace." In a separate letter, the company adds: "EMI has been forced to take action against individuals, small businesses, and large businesses." EMI asserts that the action against apparel maker 3Entrepreneurs was appropriate because the publisher has also produced clothing with its trademarked "entrepreneur" logo. "EMI has taken no action against unrelated applications and uses," the company continues, pointing to the example of Brother International's use of "Entrepreneur" on sewing machines. Viscounty notes that Bloomberg LP, owner of *Bloomberg Businessweek*, also "has a history of taking action, where appropriate, to protect its rights when consumer confusion is likely." He ticks off several examples, including *Bloomberg LP v. Bloomberg Mortgage*, a successful suit filed in federal court in New York in 2002, and ongoing efforts to protect the company's Bloomberg Launchpad trademark for computer programs and software.

While Viscounty is correct that many intellectual property owners enforce their rights to the fullest extent of the law, the comparison with Bloomberg or any other corporation has a flaw: Unlike EMI, most companies don't make a practice of suing the very people they hope to attract.

Chase Revel, who started *Entrepreneur* in the early 1970s, was a leading purveyor of goods and services related to the swift acquisition of wealth. His published works include *184 Businesses Anyone Can Start and Make a Lot of Money* and *168 More Businesses Anyone Can Start and Make a Lot of Money*. Revel's ideas ran the gamut from the seductive and legal to the nefarious and illegal. In 1966 he was sentenced to four years in prison under his given name, John Leonard Burke, for attempting to rob four banks in Houston in one day, according to articles published 20 years later by the *Los Angeles Times*. Revel (then Burke) hired helpers to deliver letters warning bank tellers that their children had been kidnapped. (Revel researched which employees had school-age kids.) The notes stated that the children would be returned only if the tellers surrendered large canvas bags stuffed with cash. In fact, no children had been snatched, and the scheme collapsed almost immediately.

Settling in Los Angeles after his release, Revel started *Entrepreneur* and, in 1979, registered the trademark for "entrepreneur." He promptly began to enforce the mark—for example, by having his attorney send a cease-and-desist letter to the Entrepreneur Assn. at the University of California's Graduate School of Management in Los Angeles in November 1980. In 1987, Revel sold a majority stake in *Entrepreneur* to an investor group led by businessman Peter J. Shea and later offloaded the rest. The trademark went along with the magazine.

After moving on to other pursuits, Revel continued to have scrapes with the authorities. As recently as 2006 he denied wrongdoing and paid \$27,500 in a settlement of civil allegations by the Federal Trade Commission that he created false advertising for Gero Vita dietary supplements. According to public records, Revel, now 74, owns a home in Oceanside, Calif. A man who answered the phone there hung up immediately, and a message went unreturned.

In its letter, EMI asserts that "while Mr. Revel has an interesting history, he and his alleged actions have no relevance to EMI's operations or efforts to enforce its intellectual property rights." Revel, the company adds, "has had nothing to do with, and no contact with, EMI for almost 30 years." Shea, the company's current owner and chief executive officer, has no desire to talk to "a competing publication" about his magazine's distant past or its trademark enforcement policies, the letter states. In an interview with the magazine *World Trademark Review* in 2009, Shea, who earlier made a fortune marketing a simulated version of stained glass, said: "Basically, we're trying to protect our brand."

Smith, the Sacramento public-relations man, counters that EMI protects its brand by rolling over tiny capitalists and using lawsuit damages as a source of income revenue. He presents himself as the quintessential victim of what he calls EMI's maltreatment. "There's no way my little firm representing small businesses would be confused with a national magazine," he complains. "This is a scam."

The federal courts disagreed. In 2003 a U.S. district judge in Los Angeles found that both Smith's company, EntrepreneurPR, and *Entrepreneur* magazine "printed publications geared for small businesses." Testimony showed that some of Smith's clients "were under the mistaken belief that there was an affiliation between *Entrepreneur* and EntrepreneurPR," the judge added. In 2004 the U.S. Court of Appeals for the Ninth Circuit in San Francisco affirmed the ruling of willful infringement. Smith has changed the name of his company to BizStarz, laid off his half-dozen employees, and works out of his home.

"Smith's own actions caused the demise of his business," EMI says in its letter. "Rather than focusing his remaining resources on his rebranded company and half-dozen employees, Smith squandered the company's time and money on an ill-advised appeal."

Castro, the Austin real estate broker, also doubts anyone would mix up his website EntrepreneurOlogy.com with *Entrepreneur*. "I mean, how is 'entrepreneurology,' a word I have to admit you can barely pronounce, going to cut into their business?" he asks. EMI's main website is entrepreneur.com. It also has a Spanish-language site called entrepreneurespanol.com.

In addition to selling residential real estate, Castro has a law license and courtroom experience. He responded to

EMI's cease-and-desist letter by preemptively suing the publisher in federal court in Austin. "It was Castro who leapt to litigation," says EMI. In April a federal judge dismissed 12 of Castro's 14 claims but said he could continue to pursue his allegation that EMI's core trademark is invalid. As described in his court papers, Castro's argument is that "the public has not come to associate the word 'entrepreneur' exclusively with EMI's products or services." The word, he adds, "is a generic noun that is in the public domain."

"Generic" is a crucial term of art in intellectual property law. A judicial determination of generic status ordinarily dooms a trademark. Even distinctive marks that become generic can lose their legal protection; cellophane and aspirin are but two examples.

EMI argues in its court filings in Austin that "Castro's entire argument miscomprehends and misstates" trademark law. In connection with business media, "entrepreneur" is not generic, EMI contends; it has acquired "secondary meaning," another term of art that refers to a seemingly ordinary word that has come to be associated with a particular company's products. "Time," for example, has been trademarked to identify a magazine, even though the word also refers to hours and minutes, EMI maintains. Castro can make use of "entrepreneur" in its descriptive sense ("Hello, my name is Daniel Castro, and I am an entrepreneur"), but he may not use the word as the name for a communications business, EMI says.

To prevent a trademark from deteriorating, cellophane-style, into a generic term, courts encourage mark holders to protect their interests. "EMI has the right and obligation to police and enforce its trademark rights, or risk diminishing or altogether losing those rights," the company argues in its court papers.

In the litigious precincts of intellectual property, the aggressor inevitably finds itself chasing its own tail—and EMI and its lawyers have actually tried to use the "generic" argument to their advantage. In 2008, Ernst & Young, one of the Big Four accounting firms, sued EMI in federal court in New York, alleging that the publisher violated its trademark for an Entrepreneur of the Year award. The dispute over the prize dates to 1994, when Ernst first sent EMI a cease-and-desist missive aimed at *Entrepreneur's* similarly named award. EMI fired back in a lawsuit in California that Ernst's award trademark cannot be infringed because "entrepreneur of the year" is a generic term. In the end, Ernst and EMI settled their differences confidentially and out of court. EMI changed its award name slightly (nominations for "*Entrepreneur Magazine's* Entrepreneur of 2011" are now open), while Ernst is celebrating the 25th anniversary of its trademarked Entrepreneur of the Year program.

This year, as in years past, the real winners don't even have to enter. They are the many lawyers who profitably stoke the perennial flames of intellectual property antagonism. They may not be entrepreneurs, but EMI has certainly bulked up their bank accounts.

[Barrett](#) is an assistant managing editor at Bloomberg Businessweek.



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Exhibit C

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6 UNITED STATES BANKRUPTCY COURT
7 Eastern District of California
8 Sacramento Division

9 In re

10 Scott R. Smith,

11 Debtor.

12 Entrepreneur Media, Inc., a
13 corporation,

14 Plaintiff,

15 v.

16 Scott R. Smith,

17 Defendant.

Case No. 01-25334-A

Adv. No. 01-2219-E

Hearing: September 13, 2006
11:00 a.m.
Courtroom 28

18 ORDER TO SHOW CAUSE

19 TO PLAINTIFF ENTREPRENEUR MEDIA, INC., ITS ATTORNEYS OF RECORD
20 AND OTHER PARTIES IN INTEREST:

21 It appearing that plaintiff alleged claims in its complaint herein pursuant to 11
22 U.S.C. § 727 (a) seeking a denial of defendant's discharge, and it further appearing that
23 the pre-trial statement submitted by plaintiff fails to state that any evidence will be
24 offered in support of such claims, and it further appearing that defendant's discharge has
25 been withheld for more than five years because of plaintiff's claims under § 727, thereby
26 impairing defendant's fresh start,

27 ///

28 ///

163

1 YOU ARE HEREBY ORDERED TO APPEAR AND SHOW CAUSE on
2 September 13, 2006, at 11:00 a.m., in Courtroom 28, Seventh Floor, United States
3 Courthouse, 501 "I" Street, Sacramento, California, and show cause why the claims stated
4 in the complaint herein pursuant to § 727(a) should not be dismissed and why sanctions
5 in the amount of \$10,000,000.00 should not be ordered against plaintiff and its attorneys
6 pursuant to 11 U.S.C. § 105(a) and Federal Rule of Bankruptcy Procedure 9011.

7 IT IS FURTHER ORDERED that opposition to the court's proposed action shall
8 be in writing and filed no later than September 6, 2006.

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10 Dated: August 14, 2006


Brett Dorian
United States Bankruptcy Judge

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

CERTIFICATE OF MAILING

The undersigned deputy clerk in the office of the United States Bankruptcy Court for the Eastern District of California hereby certifies that a copy of the document to which this certificate is attached was mailed today to the following entities listed at the address shown on the attached list or shown below.

Scott Smith
1529 55TH ST
SACRAMENTO, CA 95819

Daniel Weiss
2277 Fair Oaks Blvd #495
Sacramento, CA 95825

Michael Burkart
5150 Fair Oaks Blvd
#101-185
Carmichael, CA 95608

David Cook
PO Box 270
San Francisco, CA
94104-0270

Office of the US Trustee
501 I St. Ste 7-500
SACRAMENTO, CA 95814

Entrepreneur Media, Inc.
333 Pine St #300
San Francisco, CA 94104

Mark Finkelstein
650 Town Center Dr #2000
Costa Mesa, CA 92626

DATED: 8-15-06

By: Wickie McKinney
Deputy Clerk

EDC 3-070 (New 4/21/00)

Exhibit D



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WON ON APPEAL?

OUR CONGRATULATIONS.

Want to collect?

You can do (a partial list): Hire a search service to confirm the debtor's real property. Compare to the Debtor's financial statement. Think fraudulent conveyances. Search Plaintiff's and Defendant's indexes in court (federal and state) to locate suits and judgement to encumber. Record abstracts area wide and upon the search record more abstracts. Buy a title report to confirm ownership and proper title name. File the J-1 with the Secretary of State. Re-do the search through the Secretary of State to insure that the debtor did not re-incorporate the business. March out an OEX. Create a lien, when served, on the debtor's assets. Your alternative is post judgement interrogatories and document request. Levy on the bank accounts.

Chances

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are the client has the information in the file. Punch up the internet. Amazing what information the debtor will post on a website. Execute on accounts, contract rights and monies due from third parties. If a corporate debtor, levy on the principals. Try a motion for assignment or receiver. Debtor has a partnership interest? Charging orders are the key. Debtor doing business with a government entity? Watch for unusual rules. Try a keeper. Confirm ownership through the SBE. Is this your cup of tea? No? *Call us.*



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AREA OF SPECIALTY AND ENDEAVOR:

Commercial collections; creditors' rights in the enforcement of judgments; recovery of claims based upon diversion of electrical energy; recovery of claims based upon forgery and mishandling of negotiable instruments; fraudulent conveyances. Creditor representation in bankruptcy cases.



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David J. Cook

Practice Areas: Collections; Creditor Rights.

Admitted: 1974, California

Law School: Golden Gate University, J.D., 1974

College: University of California at Los Angeles, B.A., 1971

Born: Hempstead, New York, August 7, 1949

Robert J. Perkiss

Practice Areas: Commercial Law; Collections.

Admitted: 1974, California

Law School: Golden Gate University, J.D., 1974

College: University of California at Berkeley, B.S., 1966

Born: Santa Monica, California, August 10, 1943

Exhibit E

TRADEMARK - ITU

Attorney Docket No. 020129-000800US

Date of Deposit: December 15, 2006

I hereby certify that this paper or fee is being deposited with the United States Postal Service by "First Class Mail" service under 37 C.F.R. 1.8 on the date indicated above and is addressed to the Commissioner for P.O. Box 1451, Alexandria, VA 22313-1451.

TOWNSEND AND TOWNSEND AND CREW LLP

By: _____


Dana T. Hong-Yee

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Cook, Perkiss & Lew, P.L.C.

Serial No. 77/020,236

Filed: October 12, 2006

For: **SQUEEZE BLOOD FROM TURNIP.COM**

Examining Attorney: TBD

**AMENDMENT TO ALLEGE USE
UNDER 37 C.F.R. § 2.76 WITH
DECLARATION**

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Madam:

Applicant requests registration of the above-identified mark in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. 1051 *et seq.*, as amended). A specimen showing the mark as used in commerce is submitted with this Amendment.

Applicant is using the mark on the following goods:

Clothing, namely, t-shirts.



12-20-2006

U.S. Patent & TMO/c/TM Mail Rpt Dt. #30

The mark was first used in connection with the goods in Class 25 on or before December 15, 2006; was first used in connection with the goods in Class December 15, 2006 in interstate commerce on or before December 15, 2006, and is now in use in such commerce.

The mark is used on the goods and on labels and containers for the goods.

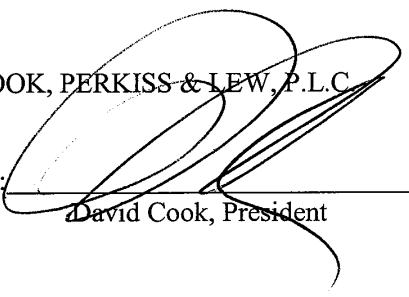
DECLARATION

I, DAVID COOK, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any registration resulting therefrom, declare that: I am the applicant; I believe that I am the owner of the mark sought to be registered; to the best of my knowledge and belief, no other person, firm, corporation or association has the right to use said mark in commerce, either in the identical form or in such near resemblance thereto as may be likely, when applied to the goods or services of such other person, as to cause confusion, or to cause mistake, or to deceive; all statements made of my own knowledge are true; and all statements made on information and belief are believed to be true.

COOK, PERKISS & LEW, P.L.C.

Dated: December 15, 2006

By:


David Cook, President

AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT

Please charge the fee of \$100 per class to the Deposit Account of Townsend and Townsend and Crew LLP No. 20-1430. Please charge any additional fees that may be due, or credit any overpayment, to our Deposit Account No. 20-1430.

Please direct all future correspondence in this application to the new address.

Respectfully submitted,

TOWNSEND and TOWNSEND and CREW LLP

Dated: December 15, 2006

By: 

Marc M. Gorelnik
Attorneys for Applicant

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, 8th Floor
San Francisco, CA 94111-3834
Telephone: (415) 576-0200
Facsimile: (415) 576-0300

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